IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No. 551 of 2004

For Approval and Signature:

HONOURABLE MR.JUSTICE D.H.WAGHELA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SUBHASH DOLATRAM BHUJWANI - Applicant(s)
Versus
THE STATE OF GUJARAT - Respondent(s)

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Appearance :

MR KB ANANDJIWALA for Applicant(s) : 1,
MR.LB DABHI APP for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE D.H.WAGHELA

Date : 05/10/2007

ORAL JUDGMENT

1. The petitioner has invoked the provisions of Sections 397 and 401 of the Code of Criminal Procedure, 1973 (for short, “The Code”) to challenge the order dated 02.08.2004 of learned Additional Sessions Judge, Vadodara in Criminal Revision Application No.204 of 2004, whereby

order dated 13.02.2004 of learned Chief Judicial Magistrate, Vadodara releasing the petitioner on bail was set aside and the petitioner was ordered to surrender before the Court on 13.08.2004. Upon the present petition being admitted on 13.08.2004, interim relief staying operation of the impugned order was granted and it has continued to operate till now. Thus, the petitioner has remained on bail since original order dated 13.02.2004 of learned Chief Judicial Magistrate, Vadodara and none of the conditions are stated to have been violated.

2. The aforesaid first order dated 13.02.2004 granting bail to the petitioner was reversed by the impugned judgment and order dated 02.08.2004 mainly on the grounds that chargesheet at the end of investigation was already filed with the allegations of serious offences punishable with imprisonment for life and Sections 7 and 13 of the Prevention of Corruption Act having been added to the charges. Even as the bail applications of the other co-accused persons were rejected by the Sessions Court, learned Chief Judicial Magistrate, Vadodara had granted bail to the petitioner without having jurisdiction under Section 437 of the Code, according to the impugned judgment.

3. Arguing the petition, learned counsel Mr.Anandjiwala submitted that the original order granting bail to the petitioner recorded cogent and sufficient reasons for granting bail and a revision petition to challenge that order was not maintainable. He also submitted that each and every other co-accused person, implicated in the same offence, was, by now, released by one or the other order of this Court and hence, even on the ground of parity, the petitioner was entitled to remain on bail. Learned counsel relied upon the judgment of the Hon'ble Supreme Court in **Usmanbhai Dawoodbhai Memon and others, etc. V/s. State of Gujarat [AIR 1988 SC 922]** and the judgment of this Court in **Makwana Sambhubhai Chethabhai V/s. State of Gujarat [1992(2) G.L.R. 1291]** in support of the submission that order granting bail was interlocutory order and revision application did not lie therefrom.

4. Referring to the affidavit of Dy.S.P., C.I.D. Crime, Vadodara, learned A.P.P. Mr.L.B. Dabhi submitted that the offences in which the petitioner was implicated included offence punishable under Sections 409 and 195 of the Indian Penal Code which were exclusively triable by Sessions Court. That the petitioner was charged with conspiracy to extort money and settle the disputes of civil nature by filing

false criminal cases. He submitted that there was sufficient material collected during the investigation to indicate that the petitioner was actively involved in the conspiracy along with his brother and having regard to the nature and circumstances of the case, the petitioner did not deserve any discretionary relief even if the Court were to find that the impugned order was made in a revision application which was not maintainable. He, however, fairly conceded that after three years of pendency of the present petition and filing of the chargesheet and 12 years after filing of the original F.I.R., the petitioner may be otherwise entitled to be released on bail in view of the relief granted to all other co-accused persons. It was also agreed by learned counsel, appearing on both sides, that the trial was required to be expedited and, subject to any order or injunction by a superior Court, the trial court was required to proceed with the trial as expeditiously as practicable, preferably on day-to-day basis in accordance with law and the provisions of Section 309 of the Code.

5. Therefore, without the issue as to whether revision by the State was maintainable or not being fully argued and decided, the present petition is allowed in the overall facts and

circumstances of the case and in the interest of justice so as to avoid further interlocutory proceedings, with the observation that the trial against the petitioner should proceed as expeditiously as practicable. Rule is made absolute accordingly with no order as to costs.

(D.H.WAGHELA, J.)

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